Supreme Court, U.S.
FILED

05-709 AUG 12 2005

OFFICE OF THE CLERK

In the
SUPREME COURT of the UNITED STATES

DOUGLAS SORENSON

vs.

STATE OF GEORGIA
STATE TROOPER GARRETT

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the 11th Circuit

BRIEF FOR PETITIONER

DOUGLAS SORENSON
8221 Hwy. 16 W.
Lot 25
Monticello, GA
31064
(706) 468-9715

PRO SE
No counsel
of record

PWC's

QUESTIONS PRESENTED

Was Trooper Garrett within the scope of his official capacity by taking physical action on private property on behalf of a seat belt law?

Also, Is the State Seat Belt Law, specifically O.C.G.A. 40-8-76.1, valid to the purpose for which it was enacted?

PARTIES TO THE PROCEEDINGS

Plaintiff-Petitioner in the proceedings below is Douglas Sorenson.

Defendants-Respondents in the proceedings below are State of Georgia and State Trooper Garrett.

OPINIONS BELOW

The District Court decision that is the subject of this case was No. 5:04-cv-0123-4.
The opinion of the Court of Appeals affirming the District Courts dissmissal was No. 04-14799-BB.

JURISDICTION

The District Court order dismissing the case was entered on Aug. 18,2004. the Court of Appeals decision affirming the dismissal was entered on April 15,2005.
The decision denying the request for rehearing was entered on June 24,2005.
The jurisdiction of this court is based on Title 28 U.S.C. §1254(3). Since the constitutionality of a statute is being drawn into question, Title 28 U.S.C. §2403(b) may apply.
The Statute in question is O.C.G.A. §40-8-76.1.

RULE INVOLVED

Rule 10(c) of the Supreme Court of the United States is the rule governing review of this case.
This case was filed under Title 28 §2201 and Title 42 U.S.C. §1983.

STATEMENT OF FACT

In March of 2004, Trooper Garrett came onto private property, a horse barn where Petitioner is employed, where he pointed his gun at Petitioner, handcuffed him, grabbed him by the shirt, bent him over his patrol car, and verbaly abused him. On April 22, 2004, Petitioner filed suit in the District Court of Middle Georgia.

Persuant to 28 U.S.C. §636(c), both parties consented to the Magistrate Judge to have jurisdiction for the proceedings. On August 18, 2004, judgment was entered dismissing Petitioners case.

The appeal was filed on September 15, 2004. The dismissal was upheld by the appeals court Petitioner then filed a request for rehearing, which was denied June 24, 2005.

The relief Petitioner sought was punative relief against Trooper Garrett for emotional distress, Declaratory Judgment dismantling the State Seat Belt Law (specifically O.C.G.A. 40-8-76.1), and any other relief the court found appropriate.

SUMMARY OF THE ARGUMENT

Petitioners argument was based on "extraordinary seisure" by Trooper Garrett which Petitioner claims was beyond what was reasonable for any legitimate interest in this case. It was also based on contraversy, broadness, and validity of said statute concerning its enacted purpose. Respondents claimed immunity under the 11th Amendment of the U.S. Constitution. In response to this, Petitioner argued that the pointing of a gun affects his "physical interest". Further, this was done on private property.

Petitioners argument against O.C.G.A. 40-8-76.1 was based on figures from actual results related to the laws enacted purpose. Respondents claimed that the constitutionality had been upheld by the Georgia Supreme Court, quoting the case of C.W. Matthews Construction Co. vs. Gover, in 1993. Also the case of Farley vs. State in the year 2000. Ultimatly, 11th Amendment immunity waS granted and the case dismissed.

ARGUMENT AND CITATIONS OF AUTHORITY

A. Trooper Garrett's action and his claims in support of it.

Trooper Garrett supports his action in this case by claiming that Petitioner pointed at him.

It is impossible for Trooper Garrett to have seen anything of this nature, and Petitioner can show proof. In support of his case, Petitioner cited the cases of Bartlet vs. United States (1956), Atwater vs. Largo Vista (2001), and Wyoming vs. Houghton (1999). Based on the facts, circumstances, and evidence presented, Petitioner maintains that Trooper Garretts' action was an extraordinary seisure not reasonable for any legitimate interest. Respondents further claim that Trooper Garrett is immune because of his official capacity. Petitioner cited the cases of Deary vs. Guardian Loan Co.(1985) and Neal vs. State (5th cir 1972) in response to this.

B. State of Georgia also claimed immunity.

Petitioner quoted the cases of Elley vs. Morris, and Peacock vs. Rigsbee (1970) These cases, as well as others, show that State Officials actions must be constitutional. Suits to redress can be filed. Petitioner is challenging the constitutionality of O.C.G.A. 40-8-76.1 based on contraversy, and lack of valid relation to its enacted purpose.

CONCLUSION

Petitioner has based his case on several judicial cases, evidence of fact, constitutionality of statute, and seisure beyond what is reasonable. Yet, despite the citations of authority, and the evidence introduced in support of it, the court below still granted Respondents a dismissal. Petitioner now calls upon the Supreme Court of the United States for relief.

APPENDIX

OPINIONS

DISTRICT COURT:

(i) The enforcement of said law is constitutional.

(ii) Plaintiff's claims as set forth in his complaint do not rise to the level of a constitutional denial or deprivation of rights, privileges or immunities as contenplated by 42 U.S.C. §1983.

(iii) Even if Plaintiff's claims did state a claim under §1983, the defendant Garrett would be entitled to both Eleventh Amendment and qualified immunity.

(iv) State of Georgia is not a "person" capable of being sued under § 1983.

11th circuit Court of Appeals:

(i) Any force used by Trooper Garrett during the issuing of the citation was not excessive force in the constitutional sense.

(ii) No evidence that the force used was anything but de minimus.

(iii) The Magistrate Judge did not err by dismissing Sorenson's complaint for failing to state a claim upon which rekief can be granted.

FINDINGS OF FACT:
DISTRICT COURT

(i) The Georgia Supreme Court has previously upheld the constitutionality of O.C.G.A. §40-8-76.1

11th circuit Court of appeals

(i) We agree with the District Court's conclusion that Sorenson did not allege a violation of his constitutional rights sufficient to warrent relief under §1983.

APPROPRIATE CITATIONS

I. Executive 100 Inc. vs. Martin County. 922 F.2d 1536 (11th Cir. 1991)
For a motion to dismiss to be granted, plaintiff's complaint must evidence that there is no set of facts entitling them to relief.

II. In any §1983 action, the initial question presented to the court is whether the essential elements of a §1983 cause of action are present. Parratt vs. Taylor 451 U.S. 527,535 (1981).

CITATIONS BY COURT OF APPEALS

I C.F. Gold vs. City of Miami 121 F. 3d 1442,1446-47 (11th Cir. 1997)
Minimal pain from handcuffs is insufficient to establish a claim for excessive force

II. Nolin vs. Isebell 207 F.3d 1253 1257 (11th Cir. 2000)
The application of de minimus force without more, will not support a claim for excessive force in violation of the Fourth Amendment.

III. Post vs. City of Fort Lauderdale 7 F.3d 1552, 1559-60 (11th Cir. 1993) de minimus force where officer pushed plaintiff against a wall and applied a choke hold before placing him in handcuffs despite the fact that plaintiff was being arrested for violating a building code and did not resist arrest.

APPROPRIATE CITATIONS CONT'D
CITATIONS BY PETITIONER

(1) Bartlet vs. United States 232 F.2d 420 (1956)
What is reasonable depends on the facts and figures of each case.

(2) Atwater vs. Largo Vista 532 U.S. 3 18 (2001) Whether a search or seisure is extraordinary turns on the manner in which it was executed.

(3) Wyoming vs. Houghton 526 U.S. at 300 (1999)
Reasonableness hinges on the degree to which it is needed for the promotion of a legitimate governmental interest.

(4) Deary vs. Guardian Loan Co. 623 F. Supp 630 (1985)
Enforcement officials when acting in enforcement capacity may be sued in action under §1983 challenging constitutionality of statute and seeking Declatory and injunctive relief.

(5) Neal vs. State 469 F.2d 446 (5th Cir. 1972)
Individual officiers of a State may sued when they act unconstitutionally under color of State law.

(6) Elley vs. Morris 390 F. Supp913
State officials may be sued in Federal Court on the basis that the state statutes under which they are acting are unconstitutional.

(7) Peacock vs. Rigsby 309 F. Supp. 542 (N.D. GA 1970)

Suit to redress unconstitutional action by State officials will lie in Federal Court.